IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4180 of 1995

to

FIRST APPEALNo 4188 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?No

2. To be referred to the Reporter or not?
No
No
No
No
No
No
No
No J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

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SPECIAL LAND ACQ. OFFICER

Versus

GADHVI JABARDAN PURJI KALUJI

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Appearance:

P.G. Desai, GOVERNMENT PLEADER for appellant

MR VIPUL S MODI for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 09/05/97

COMMON ORAL JUDGMENT :

Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated March 11, 1994, passed by the learned Joint District Judge, Banaskantha, at Palanpur,in the group of Land Reference Cases Nos. 1142 of 1988 to 1050 of 1988.

As the common questions of law and facts are involved in this group of First Appeal, they are disposed of by the common judgment.

Agricultural lands of the respondents-claimants came to be acquired for Sipu Reservoir Project, Palanpur, by notification under Section 4 of the Act published in the official gazette on October 30, 1984. After following the necessary procedure under the Act, the Land Acquisition Officer has declared his award on March 17, 1988, and determined the market price of the acquired land at the rate of Rs.5500/- per Acre for irrigated land; Rs.3500/- per Acre for non-irrigated land and Rs.100/- per Acre for Pot Kharaba land. According to the claimants, compensation awarded by the Land Acquisition Officer was inadequate and, therefore, they have filed applications under Section 18 of the Act before the Collector, Banaskantha, to make reference before the District Court. The said applications were referred to the District Court, at Palanpur, which were numbered as Land Acquisition Reference Nos.1142 of 1988 to 1150 of 1988. The above stated land acquisition references came to be transferred to the court of the learned Joint District Judge, at Palanpur. All the land references were consolidated and tried together.

On behalf of the respondents-claimants, Dolaji Jethaji was examined at Exh.12. No witness was examined on behalf of the opponents-appellants.

The learned Joint District Judge, after appreciating oral as well as documentary evidence, had come to the conclusion that all the lands were having similar fertility and were also having irrigation facilities and, therefore, he categorized the lands as irrigated land and determined the market price of the acquired lands at Rs.30,000/- per Acre, i.e., Rs.3/- per

sq.mtr. The learned District Judge, after taking into consideration the yield method, came to the conclusion that the claimants were deriving income from the acquired lands at Rs.6000/- per Hectare per year. The learned Joint District Judge applied five years purchase factor to yearly income and determined the market price at Rs.30,000/- per Hectare. The learned District Judge also gave benefit of statutory additional amount under Section 23(1-A) of the Act and solatium on the amount of compensation.

Learned Government Pleader has submitted that the reference court has erred in adopting yield basis for determining the market price of the acquired land. He has submitted that the Land Acquisition Officer had categorized the lands under acquisition as non-irrigated and irrigated lands. In spite of that categorization, the reference court had treated the said lands as irrigated lands and awarded an uniform compensation. The argument of the learned Government Pleader has no merit and deserves to be rejected. The witness, who was examined before the reference court, had deposed that the claimants were taking three crops from the acquired land and all the lands were irrigated land, because the lands are situated near the river bank. The witness further deposed that in his village, there was facility of primary school, wells, electricity, etc. and the village was connected by road leading from Palanpur to Deesa. Further, extracts of village form 7/12 were produced which also show that the claimants were getting three crops in the acquired lands. The learned Joint District Judge has also taken into consideration the village form 7/12 and came to the conclusion that the claimants used to take two seasonal crops in winter and monsoon. The claimants used to take crops of bajri, rayda, eranda. The learned Joint District Judge, in paragraph 14 of the judgment, had taken into consideration the income of each crop and after deducting expenses had come to the conclusion that the claimants were deriving income of Rs.6000/- per Hectare per year from the acquired lands. Yearly purchase factor of five was applied in the yearly income, which, in my opinion, is on the conservative side. It is an admitted fact that all the lands were situated adjoining to each other and water facility from the tube-wells was extended to all the lands. Moreover the acquired lands were situated near the river bank and, therefore, they had the facility of irrigation. The reference court rightly came to the conclusion that the categorization of the lands made by the Land Acquisition Officer was erroneous and the lands should be categorized as irrigated lands only. I do not find any infirmity or

perversity in the finding of the learned Judge that the acquired lands were irrigated lands. It must be stated that neither the claimants nor the acquiring body led any evidence with regard to sale instances for determination of market price of the acquired lands. Therefore, the reference court was justified in adopting the yield basis for determination of market price.

The learned advocate for the respondents-claimants has invited my attention to the judgment of the Division Bench of this Court (Coram: B.N. Kirpal,C.J., (as he then was) & R.K. Abichandani, J.), in First Appeals Nos. 995 to 1000 of 1993. rendered on July 22, 1994. In the above group of First Appeals, lands of village Jagol were acquired by notification under Section 4(1) of the Act issued on April 5, 1984. The purpose of the acquisition was the same, i.e, Sipu Reservoir Project. In the above group of First Appeals, the market price of the land was determined at Rs.5/- per sq.mtr. In the above group of First Appeals also, the reference court had determined the market price on the basis of income derived by the claimants from the agricultural produce. The Division Bench had held that, when there was no evidence with regard to sale transaction, income basis was the best evidence available for determination of the market price. In my opinion. the aforesaid decision of the Division Bench rendered in First Appeal No. 995 of 1993 and allied matters, would squarely apply to the facts of the present case. In the present case also, acquisition was for the same purpose and notification under Section 4(1) of the Act was also issued in the near proximity of time. Lands, which were the subject matter of the First Appeals No.995 of 1993 and allied matters, and the lands which are the subject matter of the present group of appeals are also situated in the nearby vicinity. The Division Bench had determined the market price of the acquired lands at Rs.5/- per sq.mtr under notification which was issued on April 5, 1984. In the present group of First Appeals, notification under Section 4(1) of the Act was issued on October 18, 1984, wherein the reference court had determined market price at Rs.3/- per sq.mtr, which is quite just and adequate and cannot be said to be on higher side or excessive. Therefore, determination of market price of the acquired lands by the reference court deserves to be upheld.

The learned Government Pleader has next contended that the references were time-barred. This point was elaborately discussed by the reference court in its judgment. Burden to prove that the references were

time-barred was on the opponents. They had not led any evidence in support of their case. On the contrary, the claimants had led sufficient evidence that no notice under Section 12(2) of the Act was served on them. When they came to know about the declaration of the award by the Land Acquisition Officer, they have preferred references within the specified time and, therefore, the reference court had rightly held that the references were filed within time and, therefore, the argument of the learned Government Pleader that the references were time-barred deserves to be rejected.

None of the contentions raised by the learned Government Pleader has any merit and, therefore, the market price determined by the reference court at Rs.30,000/- per Acre, i.e., Rs.3/- per sq.mtr is quite just and legal and does not call for any interference in the present appeals.

The reference court has ordered to deduct 5% of the government share with respect to the lands which were new tenure lands. Direction of the reference court to deduct 5% of government share with respect of to the acquired lands which were new tenure lands is erroneous, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904. Question arose before the Supreme Court as to whether the government can deduct any amount from the compensation which was payable to the owner whose lands were compulsorily acquired under the Act. The Supreme Court, after considering the scheme of Section 43 of the Bombay Tenancy & Agricultural Lands Act and Section 23(1) of the Act, held that, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 13 does not arise and the State is not entitled to deduct any amount from the compensation which was awardable to the claimants-owners. In view of the settled legal principle propounded by the Apex Court, the reference court was not justified in deducting the amount of 5% being the share of the Government with respect to the acquired lands which were new tenure lands. Award of the reference court is required to be modified accordingly.

It is clarified that the claimants shall get the benefit of additional amount under Section 23(1-A) of the Act. It is further clarified that the claimants shall not get the benefit of interest under Section 28 of the Act on the additional amount under Section 23(1-A) of the Act as well as on the amount of solatium under Section 23(2) of the Act.

In the result, the appeals are dismissed with no order as to costs. The appellants are directed to deposit the awarded amount in the District Court within three months from the date of this order. The Office is directed to send the writ forthwith.

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(swamy)